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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

HANOVER SOCIETY FOR THE DEAF, INC.
Petitioner

vs.

BOARD OF SUPERVISORS OF
HANOVER COUNTY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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17 pp

QUESTIONS PRESENTED

I

Do the Fifth, Sixth, Ninth, and Fourteenth Amendments entitle Petitioner to compulsory process for obtaining witnesses in its favor?

II

Once State establishes a system for the distribution of bingo licenses, do Fifth and Fourteenth Amendment due process clauses impose requirement of fundamental fairness in treatment of the various applicants?

III

Do the equal protection and due process clauses require the State of Virginia to follow established precedent (in the highest Court of the State of Ohio) and require the evidence at trial "to indicate that applicant deliberately attempted to violate" the applicable statute?

IV

Are Virginia bingo laws, in particular, Virginia Code Section 18.2-340.1 unconstitutionally vague and repugnant to the due process and equal protection clauses of the Fourteenth Amendment?

V

Have the Petitioner's due process and equal protection rights been violated by a biased Trial Court's numerous rulings which denied Petitioner fundamental fairness; as required by the due process clause of the Fifth and Fourteenth Amendments?

VI

Is it a violation of the equal protection and due process laws for Virginia bingo laws to give a County Administrator, acting as an employee of a Board of Supervisors, "carte blanche" authority to approve or disprove permit applications, and to ignore principals of estoppel and laches?

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II. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO IMPOSE A REQUIREMENT OF FUNDAMENTAL FAIRNESS.

III. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO FOLLOW THE ESTABLISHED OHIO PRECEDENT WHICH REQUIRES THE EVIDENCE AT TRIAL "TO INDICATE THAT AN APPLICANT DELIBERATELY ATTEMPTED TO VIOLATE" THE APPLICABLE STATUTES.

IV. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BECAUSE OF THE REFUSAL OF THE STATE COURT TO FIND THAT THE CODE OF VIRGINIA FOR BINGO LAWS, SECTION 18.2-340-1 IS UNCONSTITUTIONALLY VAGUE.

V. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE TRIAL

COURTS NUMEROUS RULINGS WHICH WERE ADMITTEDLY BIASED AND DENIED THE PETITIONER FUNDAMENTAL FAIRNESS.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

The Petitioner, Hanover Society for the Deaf, Inc., respectfully pray that a writ of certiorari issue to review the decision of the Supreme Court of Virginia entered in this proceeding on July 30, 1993.

OPINIONS BELOW

The Orders of the Supreme Court of Virginia denying Petitioner's request for an appeal dated June 3, 1993 (Appendix B), and a subsequent Order denying Petitioner's request for a rehearing dated July 30, 1993, (Appendix C) appear in the Appendix. The Hanover County Circuit Court Order dated March 12, 1993 (Appendix A) is also included in the Appendix.

JURISDICTION

The Order of the Supreme Court denying Petitioner's request for an appeal was entered on June 3, 1993. A subsequent Order denying Petitioner's request for a rehearing was entered on July 30, 1993, and this petition for

certiorari is filed within 90 days of entry of that order. This court's jurisdiction is invoked under 28 U.S.C. 1257, 28 U.S.C. 2403 (B).

STATUTORY PROVISIONS INVOLVED

Amendments to the United States Constitution; Five, Six, Nine and Fourteen. (Appendix. D)

Code of Virginia; 18.2-340.1 Subsection (1A) and (1B), 18.2-340.6 (B2) and (B3), 18.2-340.9, Subsection (A), 18.2-340.10, and 18.2-340.12. (Appendix E)

STATEMENT OF THE CASE

The Petitioner was notified by Respondent via letter dated January 29, 1993, that its permit request was denied. The letter provided for a hearing on February 8, 1993, pursuant to Virginia Code 18.2-340.12. After Petitioner filed

suit requesting an Injunction to allow it to operate its regular Bingo games on Friday, February 5, and Saturday, February 6, 1993, the Respondent extended Petitioner's permit to February 9, 1993 at 5:00 p.m.

A hearing occurred on February 8, 1993 and following said hearing, the Respondent, through its Administrator, denied (in writing) its permit. (Appendix F)

Petitioner appealed that decision pursuant to Virginia Code 18.2-340.12 to Hanover Circuit Court. After a hearing on February 12, 1993, on Petitioner's Motion for a Temporary Injunction to allow it to continue operating bingo games in Hanover County pending Appeal to the Circuit Court, the Court granted

Petitioner a Temporary Injunction until the Appeal date of March 5, 1993. Petitioner obtained a subsequent Injunction until March 10, 1993, when the hearing date was postponed until March 10, 1993. A briefing schedule was set.

At the February 12, 1993 hearing, it was directed by the Court that a transcript of the hearing be prepared and that the entire file and records be forwarded to the Court. It was also discussed that the Appeal would consist of the hearing before the Administrator, the entire files and records, Memorandum, and such other evidence as necessary to obtain the ends of justice.

Petitioner and Respondent filed Memorandum which included Addendums. Respondent prepared its proposed records and made it available to Petitioner about

seven (7) days prior to March 1, 1993.

Petitioner had requested complete copies of the entire file and records for all other eleven Hanover County Bingo permit holders and permit applications for 1993 permits. This material was requested in early February, 1993 and was not available to Petitioner until after the February 8, 1993 hearing and after the February 9, 1993 rejection letter (Transcript of March 10, 1993 Circuit Court hearing hereinafter referred to as Tr.) (Tr. page 26).

The Addendum filed by Petitioner and record filed by Respondent contained material each considered relevant to the issues in this case. They include material which is a matter of public record, by Statute, including all the

audit opinions and permit approval or denial letter for Petitioner and the other permit holders in Hanover.

The Addendum filed by Petitioner and records filed by Respondent also include documents, Codes, and other material from the Health Department, Sheriff's Department, Financial Department, County Administrator, County Attorney, and Society records. Other material including evidence of compliance and support for Petitioner and members' letters relating to the issues were also filed in the Addendums.

Petitioner and Respondent did not object to the Court's consideration of all of the material contained in Petitioner's Addendum or Respondent's record. Petitioner and Respondent both argued and discussed in open argument

material in the Addendum and Record. The Court read, considered, and addressed material contained in both the Addendum and the Record in an effort to reach the ends of justice and fairly decide the appeal. (This material, along with the transcript of the March 10, 1993 hearing, and the entire record were forwarded to the Virginia Supreme Court as part of the official record.)

Before the hearing on March 10, 1993, the Court heard Oral Motion for Summary Judgment by Petitioner, and a Motion by Respondent to limit consideration by the Court of only the Memorandum (which is part of the record) filed by Petitioner prior to the March 10, 1993 hearing which set out Constitutional due process and equal

protection arguments. It included references to the critical Ohio case, Comforter of the Afflicted Children's Center, Inc., v. Brown, 424 N.E. 2d 323. That case established Fifth and Fourteenth Amendment Constitutional rights for bingo permit holders, and also established the evidentiary standard test of proof of a deliberate attempt to violate bingo statutes which were often vague.

The Petitioner's Memorandum cited numerous federal and other state decisions which are contrary to the ruling of the Virginia Supreme Court in this cast (Trial Memo. pages ii and iii). All of these cases were cited to the Virginia Supreme Court.

The Respondent cited no cases in its memorandum to the Hanover Circuit Court.

The Petitioner, at the March 10, 1993 hearing, objected to the Circuit Court's unconstitutional ruling denying the right to put on witnesses and refusing its due process and equal protection arguments.

In its Petition for Appeal and Petition to the Virginia Supreme Court to Rehear, Petitioner assigned as error all of the due process and equa. protection arguments it is presenting to the Court today. (Assignments of error 1 -23, Appendix G)

The Court denied Petitioner's Motion and granted Respondent's Motion. Therefore, Petitioner's four critical witnesses and the Respondent's one subpoened witness were not allowed to testify. Also critical documents were

not admitted. Petitioner objected to this ruling since documents offered were in direct response to misrepresentation by Respondent of important facts in this case.

Petitioner had concerns over the proposed record of Respondent and added relevant material from the Respondent's Administrator files pertaining to this issue.

Petitioner and Respondent have worked diligently in examining all Administrative files, which are public record as pertaining to bingo audits, and otherwise available to the public in putting together both the Respondent's Record and Petitioner's Addendum, in attempting to meet the ends of justice.

The transcript of the hearing on March 10, 1993 was made a part of the

record by the Court's final Order of March 12, 1993. The Court specifically refused the Petitioner's prayer for a Permanent Injunction and its prayer for a stay pending Appeal. (Appendix. A)

Petitioner has been in existence since 1975. It has held a bingo permit since 1978. Its game has always proceeded without Respondent or Court interruption until this proceeding. It obtains an annual permit from Respondent. Two earlier Court proceedings, 1981 and 1985, never resulted in Petitioner being unable to hold bingo games for even one day. It has enjoyed IRS 501 C 3 Status throughout the years of existence. Its basic operation has been very similar, with very similar expenses (use of proceeds) throughout the years of its

existence. Its annual permit has been renewed every year. In this case, Petitioner filed for renewal of its permit on December 18, 1992. The annual period which is reviewed is for the permit calendar year from October 1, 1991 through September 30, 1992. Respondent took a shotgun approach in denying Petitioner's permit. It ignored the fact that the reasons for refusing Petitioner's permit were cured or legally unenforceable. The trial Court Judge found Respondent had not abused its discretion in denying Petitioner's permit and that Petitioner's many Constitutional rights were not violated. The Respondent and Trial Court found Petitioner was not "operated exclusively" for charitable purposes. The Virginia Supreme Court refused to hear this Appeal on June 3,

1993 (Appendix B) and refused Petition to Rehear on July 30, 1993 (Appendix C).

ARGUMENT AND REASONS FOR GRANTING THE WRIT

I. PETITIONER'S RIGHT TO DUE PROCESS OF LAW HAS BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO ALLOW THE PETITIONER COMPULSORY PROCESS FOR OBTAINING WITNESSES IN ITS FAVOR.

The Court denied Petitioner due process and fundamental fairness by refusing to allow witnesses to testify at the March 10, 1993, hearing (Tr. pp. 22-34).

Petitioner had no subpoena power at the Administrator's hearing, and other permit holder's records were not

available until after February, 9, 1993. New and unjustified allegations were made in Respondent's trial memorandum (Tr. pp. 21, lines 23--24, Tr.24 lines 15-18), which was filed after the Petitioner's trial memorandum -- and not subject to rebuttal under the briefing schedule.

Mr. Charles Ayers (Petitioner's real estate attorney since 1981); Mr. Frank Stahl (Petitioner's Certified Public Accountant for many years); Ms. Mary Messick (the Respondent's bingo auditor); and Robert D. Eddleton (Petitioner's Secretary / Treasurer) were critical to rebut Respondents reasons for denying the permit and for proving Petitioner's due process and equal protection rights had been denied.

Mr. Charles Ayers would have testified to the 1981 real estate

transaction, and to the fact that the Petitioner's mortgage interest rate (Petitioner had a 1981 mortgage at 20% interest) "was not excessive" based on 1981 rates (Tr. p. 22 line 18). He would have also testified that the Petitioner had violated no bingo laws and he had assisted Petitioner in trying to obtain "refinancing" (Tr. p. 22. line 19).

Petitioner's C.P.A., Frank Stahl was critical to prove that the Respondent's eleven points for denying the permit were false or unenforceable (Tr. p 24, line 17--24). He also had access to the entire audit reports for the other eleven permit holders (approximately 1800 pages) approximately one week after February 9, 1993. His analysis and testimony was critical to proving the Respondent had

acted in a "totally arbitrary and capricious" manner towards the Petitioner (Tr. p. 25, line 6).

Ms. Mary Messick was critical to prove also that the Respondent's "actions are arbitrary and capricious" (Tr. p. 25, line 18), based on a comparative analysis of the way other bingo permit holders were treated.

Mr. Robert D. Eddleton, whom Respondent had also subpoened for the March 10, 1993 hearing, was critical to rebut each and every allegation of Respondent (Tr. p. 33, line 11, Tr. p. 34 lines 1--3).

The trial Court ruled "You can let the witnesses go" (Tr. p. 34, line 19).

The Petitioner replied "Yes sir, for the record we note our objections. For failure to let us go forward with

witnesses" (Tr. p. 35, lines 5--9).

Petitioner alleges that the failure of the Court to allow witness to testify at the trial was critical. The Court decided to decide the case on the record. It relied on the memorandum, the hearing before the Administrator on February 8, 1993, the Addendum, and the Argument of Counsel.

Petitioner's rights were denied because "on February 12, 1993, the Court directed that the case be decided on the February 8, 1993 transcript, memos, entire files and records, and such other evidence as necessary to meet the ends of justice" (Tr. p. 21, lines 16--24; Petitioner's Petition for Appeal and Petition to Rehear, page 1, lines 25--28). Respondent agreed with Petitioner

that "such other evidence as necessary to meet the ends of justice" was ordered by the trial Court on February 12, 1993, to be part of the decision making process for this appeal.

(Respondent's Brief in Opposition to Petition for Appeal. Page 3, line 1-4).

Comforter of the Afflicted Children's Center. Inc. v. Brown, 424 N.E 2d 323 (Cited now in Ohio bingo code, and annotations, and not adversely commented on anywhere in American Jurisprudence) sets forth Fifth and Fourteenth Amendment Constitutional protection for bingo permit holders. It holds "once a state established a system for the distribution of bingo licenses, due process clause imposed a requirement of fundamental fairness in treatment of the various applicants, R.C. Section 2915.01 et eq.

U.S.C. Const. Amends. 5,14." Comforter, page 323.

That case, which the Ohio Supreme Court denied a motion to certify the record on September 26, 1980, places Virginia and Ohio in direct conflict.

If an applicant in Ohio is entitled to fundamental fairness, certainly one in Virginia is as well. And how can denying witnesses from testifying be fundamentally fair. As argued to the trial Court and Virginia Supreme Court, Petitioner had no subpoena power for witnesses at the Administrative hearing. Its real estate lawyer, Mr. Charles Ayers, could not be present on February 8, 1993. Its accountant, Mr. Frank Stahl, had to leave in the middle of the hearing-- which was dragged out by

excessive questioning from the Sheriff and his representative. The Petitioner also had no proof of the way it was being treated as compared to other permit holders because all 1800 pages of Respondent's audit reports on all other permit holders were not available until well after the February 8, 1993 Administrative hearing. (The other reports were Ordered by Petitioner from Respondents records immediately after the Petitioner received the Respondent's permit denial letter dated January 29, 1993.) In Addition, the Respondent's trial memorandum was grossly factually flawed as will be shown by later argument.

Certainly due process rights under the Fifth and Fourteenth Amendments are violated by the refusal to let witnesses

testify.

Also the Sixth amendment requirement of compulsory process for witnesses is violated because bingo statutes in Virginia contain certain penal provisions (18.2-340.10) (Appendix E).

The Ninth Amendment to the Constitution reserves to the people rights not enumerated in the Constitution. (Appendix D)

Petitioner argues that in a civil, criminal, or quasi-criminal proceeding like this one, the power to call witnesses is a protected right which was violated.

Petitioner's lawyer should not have to stand up and argue every fact, when lay and expert witnesses have first hand and expert knowledge of the relevant

facts of this case (Amendments Five and Fourteen). (Appendix D)

"The right to enforce the attendance of witnesses derives, not from privilege conferred upon individual litigants, but from the rights and necessities of society generally, so that the demand comes from the community as a whole--from justice as an institution, and from law and order as indispensable elements of civilized life." 81 Am Jur. 2d Witnesses Section 2 p. 39; Application of Barbara (3d Dept) 7 App Div 2d 340, 183 NYS 2d 147.

After being told by the trial Court in February 12, 1993, that the appeal, under the confusing Virginia statutes, would include "such other evidence as necessary to meet the ends of justice", and then refusing witnesses testimony is

a denial of fundamental fairness (Amendments, Five, Six, Nine, and Fourteen). (Appendix D)

II. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO IMPOSE A REQUIREMENT OF FUNDAMENTAL FAIRNESS.

Petitioner has clearly urged the trial Court and Virginia Supreme Court to impose the standard of fundamental fairness. From the very beginning of these proceedings. including the filing of Petitioner's pretrial memorandum with references to the Comforter requirement of the fundamental fairness, the Petitioner has urged that this must be done. The Virginia Supreme Court has never adopted the fundamental fairness

requirement for any bingo permit holder.

The failure of the Virginia Supreme Court to adopt this standard in this case, which contains numerous instances of denial of fundamental fairness to Petitioner, begs to be addressed by this Court.

The Petitioner argued to the trial Court " We take the position that the law that we've sited shows that we are entitled to fundamental fairness under the Comforter case cited by the Supreme Court of Ohio, which deals with rights, and establishes that fact when State set bingo laws and set up an organization that triggers the fundamental fairness of treatment for that organization,..... The Court recognized further the rights under the Constitution of the United States, the Fifth and Fourteenth

Amendment, the certain rights that were there." (Tr. p. 37, lines 14--25, Tr. p. 38, lines 1--2) Petition for Appeal, and Petition to Rehear, p. 4, and citations of cases in those petitions.

III. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO FOLLOW THE ESTABLISHED OHIO PRECEDENT WHICH REQUIRES THE EVIDENCE AT TRIAL "TO INDICATE THAT AN APPLICANT DELIBERATELY ATTEMPTED TO VIOLATE" THE APPLICABLE STATUTES.

The Comforter Court set the evidential standard which the trial Court failed to accept. "Evidence failed to indicate that applicant deliberately attempted to violate the Act and the

provisions of the Act were unclear concerning operation of concession stands at bingo sessions." Comforter at page 323.

Petitioner submits the Court had to find a "deliberate attempt" to violate the law. The Court made no such finding. No evidence to sustain any such finding exists.

How can again requesting, for annual approval, virtually the same expenses, to the same people, be a deliberate attempt to violate law (Tr. pg. 48 L. 13-24)?

Just as the Comforter Court found that applicant had persistently tried to comply with Ohio law, the Petitioner submits the record is replete with its efforts to comply with the Law.

Petitioner told Respondent's Administrator on the record in no

uncertain terms to let it know what would be necessary to obtain approval of its permit. In his continuing effort to deny Society fundamental fairness, this was never done. The trial Court and Virginia Supreme Court were fully advised of this position.

The failure of the trial Court and the Virginia Supreme Court to adopt this evidentiary standard denied Petitioner his Constitutional rights (Fifth and Fourteenth Amendments).

Petitioner's counsel argued to the trial Court "The Court (Comforter) specifically found that these had to be a deliberate violation of -- deliberate intent to violate the law, . . . " (Tr. P. 38, L. 2-4), (Petition for Appeal and Petition to Rehear, Page 4, and citations

of cases in those Petitions).

IV. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BECAUSE OF THE REFUSAL OF THE STATE COURT TO FIND THAT THE CODE OF VIRGINIA FOR BINGO LAWS, SECTION 18.2-340-1 IS UNCONSTITUTIONALLY VAGUE.

Petitioner's counsel argued to the trial Court "the Statute couldn't be vague or couldn't be ambiguous in that area." (Tr. p. 38, L. 4-5)

"The County Administrator abused its discretion in denying the Hanover Society a bingo application because they relied on vague Statutes and Ordinances," (Tr. p. 42, L. 18-21).

Respondent never cited or proved one specific objective Code Section Petitioner had allegedly violated.

The Administrator's February 9, 1993 reason for denial which was apparently affirmed by the lower Courts noted:

"It is my conclusion that the Jamaica Club bingo games are not 'operated exclusively for religious, charitable, community, or educational purposes', as required by law." (App. D)

This apparent reference to Virginia Code Section 18.2-340.1 is vague on its face and not supported by the facts.

Virginia Code Section 18.2-340.1 Definitions at 18.2-340.1 (B), (Appendix E), states, in part, "An organization operated exclusively for religious, charitable, community on educational purposes".

This section, which the Administrator and the lower Courts have

apparently relied on, must be read along with Virginia Code Section 18.2 - 340.9 A (Appendix E) Prohibited Practices (A) Except for reasonable and proper operating costs, including costs associated with providing clerical assistance in the conduct of bingo games or raffles for organizations composed of or for deaf or blind persons, publicizing the time and place of bingo games and raffles, and prizes, no part of the gross receipts derived by an organization, as herein defined, permitted to conduct bingo games or raffles may be used for any purpose other than (i) those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized and (ii) expenses relating to the acquisition, construction,

maintenance, or repair of any interest in the real property involving the operation of the organization and used for the lawful, religious, charitable, community or educational purposes.

The Statutes are unconstitutionally vague because, in their application, inconsistent results were reached for all other years of Petitioner's existence based on same or very similar expenses and operational practices.

All Petitioner has to do is to annually report its income and expenses and have a C.P.A. certify that they are reasonable, necessary, and proper. (Virginia Code Section 18.2-340.6 B 2 and Virginia Code Section 18.2-340.6 B 3.) (Appendix E.)

This was done by Petitioner. Respondent's reference to it was not "operated exclusively" all fail because its expenses were approved and not proven to be improper or excessive by Respondent.

When a Statute or Ordinance is so vague as to convey no definite meaning to those persons whose duty it is to execute it, the Statute or Ordinance must be deemed void as a matter of law. Potomac Greens Associates Partnership v. City Council of City of Alexandria, 761 F. Supp. 416 (E.D. Va. 1991) (applying and construing Virginia law). A Statute or Ordinance is void for vagueness if it fails to give a reasonably intelligent person notice that his contemplated conduct is forbidden. Pedersen v. City of Richmond, 219 Va. 1061, 254 S.E. 2d 95

(1979); Flannery v. City of Norfolk, 216 Va. 362, 218 S.E. 2d 730, appeal dism'd, 424 U.S. 936 (1975).

How could the Petitioner know that its permit would not be approved because it was not "operated exclusively". Expenses have not fundamentally changed over the years. This year, the Petitioner has actually raised more cash than other years.

What standard is being used for the Petitioner to know what is meant by "operating exclusively". It has tried to comply with the unclear meaning of this section. It can only rely on its good faith efforts to comply with the Law and the finding of an independent C.P.A., as well as the established approval practice of the County.

Also, to look at one year and not look at all of the years of the Petitioner's hearing aid, charitable, and service contributions is very unfair. All prior years' reports of charitable contributions for Petitioner are in the record.

What does "operate exclusively" mean when reasonable, necessary, and proper expenses are paid? Petitioner's mortgage payments have been approved for every year from 1981. Its catering, concession stand, and general expense practices have always been approved. Its practice of having one major annual seminar (Attended in 1992 by over 400 deaf and hearing impaired) have always been approved. Its open door policy to the deaf and its accumulation of cash in its accounts titled in its corporate account for the

deaf have always been approved. Why is it now being turned down? What is different from this year as compared to other years. There is no showing Petitioner's did any less for charity this year than any other prior year.

The wording "operated exclusively" is simply vague in its application for consideration with other bingo Statutes under the facts of this case.

V. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE TRIAL COURTS NUMEROUS RULINGS WHICH WERE ADMITTEDLY BIASED AND DENIED THE PETITIONER FUNDAMENTAL FAIRNESS.

VI. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE STATE

COURT RULINGS WHICH FOUND THAT VARIOUS CLAUSES OF THE CODE OF VIRGINIA BINGO LAWS GIVE THE COUNTY ADMINISTRATOR, ACTING AS AN EMPLOYEE OF THE BOARD OF SUPERVISORS, "CARTE BLACHE" AUTHORITY TO APPROVE OR DISPROVE PERMIT APPLICATIONS AND IGNORES PRINCIPLES OF ESTOPPEL AND LACHES.

The United States Supreme Court laid down the rule although an ordinance might be facially fair and impartial, a citizen's right to equal protection of that law under the Fourteenth Amendment to the United States Constitution can be violated when a public authority administer the ordinance with an "evil eye and unequal hand," so as to discriminate between persons in similar circumstances. Yick Wo. v. Hopkins, 118

U.S. 356, 373-74 (1886).

A valid ordinance granting a public authority the discretionary power to grant or deny and application for a permit to carry on a certain activity, trade, or occupation can be carried out in an unconstitutional manner when a public authority or administrative board acts arbitrarily in withholding a permit form one particular applicant, while granting them to other similarly situated applicants. City of New York v. Van De Carr, 199 U.S. 552 (1904).

In the case at bar, the Respondent acted arbitrarily and discriminatory in denying the Petitioner's application for a bingo permit on the alleged grounds that an insufficient amount of its revenues are devoted to charitable

purposes as opposed to operating expenses, while at the same time, the Respondent granted bingo permits to other organizations that devote similar amounts or percentages of their revenues to charitable purposes, as opposed to operating costs (Respondent's trial Record page 8 and 16).

For example, in letters written by officers in the Hanover County Sheriff's office, it appears that the average percentage of income that the 13 organizations that held 1991 bingo permits devoted to charitable contributions was 10.75 % (Petitioner's Memo. Exh B (Letter from Sgt. D. R. Hines to Lt. H. L. Wray); Letter from Investigator Gooch to Sgt. Hines). In comparison, the Petitioner devoted 10.37% of its 1991 income to charitable

contributions in 1991. (Petitioner's Memo. Exh. C (Petitioner's 1991 County Audit Report)). By way of further comparison, a graph prepared by the Respondent which shows how much various organizations devoted to charitable contributions demonstrates that the Petitioner's 1991 charitable contributions compared favorably with those of other similarly situated organizations that held bingo games. (Petitioner's Memo. Exh. D. (Bingo Audit Report Graph for Organizations with Incomes Between $ 500,000 and 1,000,000)).

In sum, the Respondent's own records demonstrate that the County Administrator acted arbitrarily and discriminatory in denying the Petitioner's bingo permit

application on the alleged grounds that the Petitioner does not devote enough of its revenues to charitable purposes. The Respondent's arbitrary and discriminatory conduct is clearly evidenced by the fact that the Respondent's own investigation reports reveal that other similarly situated organizations that devote almost identical percentages of their incomes to charitable donations received approval of their bingo permit applications. Since the Respondent engaged in arbitrary and discriminatory acts toward the Petitioner, the Respondent violated the Petitioner Constitutional right to equal protection of law. The Respondent misled the Court because although the 1993 General Assembly passed legislation (House Bill 2313) allowing a locality to

set percentages of gross proceeds for charity, that was not in effect until July 1, 1993. After that date, a local ordinance would have to pass. (Tr. p. 6, lines 8--13.) The Respondent acted prematurely. (The Hanover County Board of Supervisors refused to locally adopt this ordinance in September of 1993 by a 4 to 3 vote -- thereby rejecting the Respondent's position.)

Respondent tried to argue to the Court that its own figures are wrong because mortgages are to be consider the same as rent and are not charitable contributions. The Respondent's own graphs and charts reflect mortgage payments for percentage of charitable contributions for other bingo organizations, but, the Respondent argued

the Petitioner is to be treated differently from the way the Respondent classifies other organization's mortgage payments. The Court erred by not recognizing that mortgage payments are not rent, and must be considered charitable use of proceeds. Virginia Code section 18.2-340.9

The critical fact in understanding this case it that the Respondent admitted to the Court on March 10, 1993 that it had changed the rules and standards this year, after the fact, for granting approval of annual permits. (Tr. p. 67, lines 2--5.) " Mr. Ganey has made some reference to the fact that the County is looking at bingo permits differently than it has in the past, and we submit that is true."

Comforter of the Afflicted Children's Center, Inc. v. Brown, 424 N.E. 2d 323 (cited now in Ohio bingo Codes and Annotations and not adversely commented on anywhere in American Jurisprudence) sets forth Fifth and Fourteenth Amendment Constitutional protections for bingo permit holders. It holds "once state establishes system for distribution of bingo licenses, due process clause imposed requirement of fundamental fairness in treatment of various applicants", Comforter, page 323.

Petitioner has been denied fundamental fairness and due process throughout this case. (Petition for Appeal, and Petition to Rehear pages 4--14).

The Court had ample evidence that

all of the Respondent's 11 points were cured or legally unenforceable. There is no legal Code Authority requiring Petitioner to refinance its mortgage. Petitioner attempted to refinance. Court had reference to a copy of a bank's rejection letter in the Addendum. Respondent's mention of the concession stand operation was a new point not covered until Respondent's trial Memorandum. The Comforter decision overrules this point, and it would have been cured by Petitioner.

Payments to member are proper as long as they are not "excessive" and are "reasonable" under the Internal Revenue Code 501 (c) (3); Texas Trade School v. Commissioner, 272 F 2d 168 (5th Cir. 1959), Brian Rudd International v. Commissioner 66 A.F.T.R. 2D (P-H) 90-5--

7 (D.C. 1989).

Petitioner testified before the Administrator that it held annual elections. Officers, who had never been previously objected to by Respondent were fairly re-elected. The only evidence the Court had was that Petitioner was a "representative form of government" "organized to carry on some worthy civic or service purpose. " State Ex Rel Sanborn v. Kalb, 543, P. 2d 872 at 878. The Sanborn case is the only case which attempts to define what is a charitable organization within the meaning of bingo codes. Petitioner meet that test. It provides an annual seminar attended by hundreds of deaf people. It makes its property available to the deaf. It buys hearing aids and many other devices for

the deaf. It has made many thousands of dollars in civil, community, and hearing related contributions. (All itemized in prior annual reports filed in the record with the Court and Respondent.)

No evidence was offered that Petitioner had ever turned down anyone for membership, or that Petitioner had ever not provided financial assistance for a hearing aid or any other requested financial assistance.

Respondent's false references to lack of internal control misses the point. All of Petitioner's income and expenses have been fully approved by the Respondent. Expenses were almost identical this year. Petitioner's C. P. A. report certified its expenses were reasonable and proper. That was all

Petitioner had to do under the Codes.

In addition, the Court had proof that "lack of internal controls" was a comment made about, almost all; if not all other permit holders. That the Respondent's own reports of other organizations prove many violations of specific Code Sections on the part of other permit holders. An itemized list of those presented to the trial Court of the Respondent's own findings of violation by other organizations is as follows: Limited Accounting Controls exercised over cash receipts; Compliance violations of Virginia Code Sections 18.2-340.5; gross receipts from the playing of instant bingo shall not exceed 33 1/3 per centum of the gross; Compliance violations of Virginia Code

Section 18.2-340.3 from the playing of pull tab devices; Compliance violations of Virginia Code Sections 18.2-340.9 G, specials exceeded $ 100.00, poor internal controls, cash payments made without payment vouchers, no inventory controls for supplies, untimely deposits, no receipts or disbursement journals, admission receipts not matching game logs, missing receipts whereby the bank deposits do not match the nightly games logs, and nightly games logs containing no useful information, no membership lists; no oaths signed; payments for mortgage payments as use of proceeds; payments for rents, etc. made to a related party without any lease agreements signed; cash missing or the necessity to replenish cash loss; non-sufficient funds and bank charges for

returned checks; bank accounts not labeled or segregated properly; Transfers as a Use of Proceeds; Price Club and Sam's Club memberships for more members that Petitioner, overpayments or incorrect ending balances; equipment for food preparation and food costs; large (over $ 220,000.00) ending bank balances. (Addendum pages 221 through 387, itemized on Petition for Appeal, pages 17-19), (Petition to Rehear, pages 6 and 7).

The Court erred by ignoring that other organizations applying for bingo permits were treated differently. The Respondent granted bingo permits to all other organizations except the Petitioner and the organization that rented from Petitioner. The Respondent gave other organizations time to correct

deficiencies granted permits despite compliance violations, allowed others to sign Corrective Agreements and told others they would be sent management letters. The Respondent refused Petitioner all of the above (Addendum pages: 359, 361, 362, 363, 382, 395, 396, 402, 403, 409, 410, 416, 417, 421, 422, 423, 424, 425, 429, 431, 432, 433, 434, 439, 440, 446, 447), (Petition to Rehear page 7).

The Court erred and denied fundamental fairness by refusing the 1985 letter from the then, and now, Assistant County Attorney, Lisa Barker. (Appendix H). That letter proves that Respondent's argument to the trial Court that it did not know about the terms of the real estate sale and mortgage until 1992 was false. Respondent told trial Court "

Your Honor our understanding that prior to the fall of '92 there have been times where these documents were shown to County officials, we were never allowed to keep a copy, there is no copy in the Court's records. There are no copies. There was no copy of the County's records until 1992." (Tr. p. 31, lines 22--25, p. 32, lines 1--3.)

The Court erred by not considering Petitioner's article on interest rates for this type of investment in 1981.

Court refused to substitute its judgement for that of a local authority where there has been an "abuse of power" by such political subdivision, Byrum v. Board of Supervisors of Orange County, 217 Va. 37 225 S.E. 2d 369 (1976).

The Court denied Petitioner

fundamental fairness by requiring it to comply with an unknown standard for "operating exclusively". Petitioner tried to comply with unclear meaning of that section. It can only rely on its good - faith efforts to comply with the law and the finding of an independent C.P.A. as well as the established practice of the Respondent.

The Court denied fundamental fairness by looking only at 1992 and not at all the years of Petitioner hearing aid, charitable, and service contributions.

In the case at bar, the Respondent contends that Petitioner is not "operated exclusively for charitable purposes" because it purchased property and catering services from members of the Eddleton family. The Petitioner does not

dispute the fact that a member of the Eddleton Family transferred realty to the Petitioner and took back a note and deed of trust with an interest rate of 20% in 1981 or that a member of the Eddleton family was paid for catering a special event hosted by the Petitioner. Petitioner argues that, in the absence of evidence that the Petitioner's payments to members of the Eddleton family for realty and catering services were/are unreasonable or excessive, the Respondent abused its discretion in concluding that the Petitioner is not "operated exclusively for charitable purposes" merely because the organization purchased property and services from members of the organization or members' families.

With respect to the note and deed of

trust received by a member of the Eddleton family in exchange for realty, the interest rate charged was the prevailing market rate for similar loans in 1981, the year in which the note and deed of trust were executed. Under the "reasonable and non-excessive" standard for payments by a tax-exempt organization to a member or other private individual for property or services, the Petitioner's payments to a member of the Eddleton family pursuant to a fair market value note and deed of trust executed in 1981 should not have been grounds for denial of the Petitioner's application for a bingo permit (record, page 84 and 85). To the contrary, since the loan is fully secured and enforceable, and was issued at the market rate of interest, the organization must be classified, as

one that is "operated exclusively for .....charitable.....purposes." The deed was recorded. The purchase price was fair based on three independent appraisals (2 real estate, 1 fixtures). Respondent has had all this material since 1981 (Addendum page 58).

Respondent's complaint that only $322.00 was used for charitable purposes out of over $800,000.00 gross is false. Respondent misleads the court by ignoring over $53,000.00 in mortgage payments, $2,547.00 paid to Mrs. Eddleton for feeding over 400 deaf and hearing impaired persons at the seminar, $640.00 to other charities as provided for in Petitioner's bylaws, and a 1993 cash savings of over $20,000.00 for 1993 in Petitioner's charitable accounts. Also

over $ 700,000.00 in prizes was paid and the Respondent only questions a very few small expenditures.

Other organizations are given credit on the Respondent's graph for "donations" from their bingo accounts to their operating accounts. Why should the Petitioner be treated differently when it pays its mortgage, a lawful use of proceeds, from its donations to its operating account.

The Petitioner has never been charged with any criminal offense. None of its members have been charged or convicted of any offense relating to bingo, and, the Court acknowledged this. The Court approved of the way the Petitioner handled its real estate transaction and noted that not one cent was stolen (Tr. page 100, lines 9 and

10).

Respondent is estopped from reaching a final decision on Petitioner's Application for a permit until Petitioner has had a reasonable time to comply with Respondent's recent request for refinancing.

Court had evidence that Petitioner had sought refinancing, although it was not required to do so. Petitioner had been informed that mortgage refinancing for a commercially speculative venture was difficult, if not impossible to obtain (Tr. page 11), and Mr. Ayers was not allowed to testify on Petitioner's earlier efforts to refinance. Again, the Court knew Petitioner's mortgage had always been approved in the past.

The Court simply denied fundamental

fairness by refusing to accept Petitioner's estoppel arguments. United States v. 198.73 Acres of Land, 800 F 2d 434 (4th Cir. 1986); Joyner v. Garrett, 751 F. Supp. 555 (E.D. Va. 1990); City of Richmond v. Virginia Bonded Warehouse, Co., 148 Va 60 138 S.E. 503 (1927); and its Laches Arguments (Tr. page 49, lines 4-7).

By annually approving almost the same expenditures, the Petitioner's membership, officers, organization, and by Joe Casey's letter (Record page 106) of January 26, 1993, leading Petitioner to believe it only needed to file a membership list to obtain a permit, Respondent cannot now deny its permit. The Respondent cannot put new or changed requirements on a permit holder after the fact. Kendall Park Chapter of Deborah v.

City of Brunswick, 387 A 2d 1214. See also Williams v. New York Club of Florida, Inc. 440 Southern 2d 1324 (mandamus issued directing county tax collector to issue permit to conduct bingo games, despite collectors concerns about violations of law governing bingo operations.)

The Court denied fundamental fairness by treating the sale of the property as violation by Mr. Ayers of the bingo laws (Tr. page 101, line 12 and 13). "A sale of property by private individual to non-profit organization with payments to be made from proceeds of bingo games", does not violate bingo laws. Opinion, Attorney General of Minnesota, 733-G, September 10, 1947; see Minnesota Code Section 349.15, page 350).

The Court denied fundamental fairness by construing the "operated exclusively" clause against Petitioner, Jennings v. Com. 109 Va. 821; Campbell v. Com. 76 Va. 564.

Respondent failed to prove any individual or class of individuals, needed protection, justifying Respondent's intrusion into Petitioner's charitable affairs (Tr. page 98). The deaf are harmed by Respondent's acts (Tr. page 98). The Court denied Petitioner fundamental fairness by making personal references to bingo and many other years hearings, when only 1981 and 1985 resulted in litigation (1981 rent case which was dropped after MAI rent appraisal; 1985 operating case which ended when Petitioner allowed access to its operating account and no violations

were discovered), by referring to a partially built building on Petitioner's property when no such building exists (Tr. page 99, 101, 103, 109, 110).

The Court denied Petitioner fundamental fairness by not considering letters of support from hundreds of citizens and from the interpreter (Appellant Addendum page 102, 140, 168) and from not granting a stay pending this appeal (Tr. 111); and by saying the Eddleton family wants to do everything the "hard way" because Petitioner has always acted in a legally correct manner (Tr. page 100).

The Court denied the Petitioner fundamental fairness by finding that there is no record of income, proceeds, or cash and that was the concern in

1985, (Tr. page 100, line 21--23), because all quarterly and annual reports listing proceeds, cash and expenditures have always been approved (Addendum page 117--120). The Court's reference to 1985 had nothing to do with the facts of this case, because since 1985 Respondent has had full access to all bingo and operating accounts. All reports of cash and disbursements have always been approved by the Respondent (Record page 69--71 and page 135--177).

The Court denied Petitioner fundamental fairness by stating "the problem that we are having today is not that the Eddleton family is stealing anything, or that they don't want to do good for the Deaf", (Tr. page 100, line 7--10).

The Courts comments made no sense

considering that over $730,831.00 (including real estate acquisition has been donated for the deaf and other charitable organizations (Add. page 169--218); Tr. page 92, Line 16-23) (Petition to Rehear page 13--14). The Respondent's own exhibit proves Petitioner has a good reputation in the deaf community (Record page 205, Exhibit 10). The only uncontradicted evidence before the Court was of its many services to the deaf and other charities.

The Court erred by speculating on what might happen in 2027 when we pay the mortgage off (Tr. page 107, line 24--25, page 108, line 1--21) (Exhibit 9). When are cases decided on what might happen in 2027?

APPENDIX A

VIRGINIA: -

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER.

HANOVER SOCIETY FOR THE DEAF, INC.,

PLAINTIFF,

v. IN CHANCERY NO. 54-93

BOARD OF SUPERVISORS OF HANOVER COUNTY,

DEFENDANT.

FINAL ORDER

THIS MATTER came before the Court upon Plaintiff's appeal from the decision of the County Administrator denying Plaintiff's application for a bingo permit, the answer of the Defendant, the memoranda of both parties, documents from the County's Administrative files

submitted by both parties and the transcript of the administrative hearing held by the County Administrator, and was argued by counsel on March 10, 1993.

UPON CONSIDERATION WHEREOF, the Court finds that the decision of the County Administrator should be affirmed and the Plaintiff's appeal and request for Injunctive relief should be denied for the reasons stated in the County's memorandum and oral argument and for the additional reasons stated by the Court from the bench; accordingly, it is, therefore

ADJUDGED, ORDERED and DECREED that the decision of the County Administrator in this matter be affirmed and that the Plaintiff's appeal and request for Injunctive relief is denied. The interim

order of this Court permitting Plaintiff to continue to conduct bingo games while its appeal to this Court was pending is of an appeal from this Court is DENIED. It is further ORDERED that the transcript of the hearing on this date be made part of the Court record in this matter. This case is hereby DISMISSED with prejudice and the Clerk is directed to strike this action from the docket and send copies of this ORDER to all counsel of record.

Enter: 3/12/93

/s/ Richard H. C. Taylor

Judge

I ask for this:

/s/ Sterling E. Rives, III

County Attorney

P. O. Box 470

Hanover, Virginia 23069

Seen and objected to:

/s/ Robert S. Ganey, Esq.

Route 301

Hanover Courthouse

Hanover, Virginia 23069

A Copy

Teste:

Richard L. Shelton, Clerk

/s/ Judith M. Tomes

Deputy Clerk

Appendix B

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON THURSDAY THE 3 RD OF JUNE, 1993.

HANOVER SOCIETY FOR THE DEAF,

Appellant,

against Record No. 930389

Circuit Court No. C-54-93

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Appellee.

From the Circuit Court of Hanover County

Upon review of the record in this case and consideration of the argument

submitted in the support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgement complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By /s/ Deputy Clerk

Appendix C

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON FRIDAY THE 30 TH OF JULY, 1993.

HANOVER SOCIETY FOR THE DEAF,

Appellant,

against Record No. 930389

Circuit Court No. C-54-93

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgement rendered herein on the 3 rd day of June,

1993 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach, Clerk

By /s/ Deputy Clerk

Appendix D.

Amendments to the United States Constitution:

V. No person shall be held to answer for a capital , or otherwise infamous crime, unless on a presentment or indictment or a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time or war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

XIV. -- Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix E

Codes of Virginia

Section 18.2-340.1 Definitions -- The following words shall have the following meanings:

(1) "Organization" means any one of the following:

(A) A voluntary fire department or rescue squad or auxiliary unit thereof which has been recognized by and ordinance or resolution of the political subdivision, where the voluntary fire department or rescue squad is located as being part of the safety program of such political subdivision.

(B) An organization operated exclusively for religious, charitable, community, or educational purposes; an association of

war veterans or auxiliary units thereof organized in the United States; or a fraternal association operating under the lodge system.

Section 18.2-340.6 (B) (2) The financial report shall be accompanied by a certificate, verified under oath, by the Board of Directors that the proceeds of any bingo games or raffles have been used for those lawful, religious, charitable, community or educational purposes for which the organization is specifically chartered or organized and that the operation of bingo games or raffles has been in accordance with the provisions of this article.

(3) Any organization having annual gross receipts from bingo games or raffles in excess of $500,000, as shown on its annual financial report, shall attach to

such report an opinion of a licensed independent certified public accountant that (i) the annual financial report presents fairly, in all material respects, beginning cash, receipts, operating cost, use of proceeds, and ending cash; (ii) the proceeds of any bingo games or raffles have been used, in all material respects, for those lawful, religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized; and (iii) the gross receipts have been used in all material respects in accordance with the provisions of this article. The failure to file the opinion of a licensed independent certified public accountant, when required, shall cause the automatic revocation of the

permit and no organization shall conduct any bingo game or raffle thereafter until the opinion required by this subdivision is properly filed with the report and a new permit is obtained. The opinion required by this section is in addition to the audit and audit fee required by Section 18.2-340.7.

Section 18.2-340.9 Prohibited practices. In addition to those other practices prohibited by this article, the following acts or practices shall also be prohibited under the provisions of this article:

(A) Except for reasonable and proper operating costs, including costs associated with providing clerical assistance in the conduct of bingo games or raffles for organizations composed of or for deaf or blind persons, publicizing

the time and place of bingo games and raffles, and prizes, no part of the gross receipts derived by and organization, as herein defined, permitted to conduct bingo games or raffles may be used for any purpose other than (i) those lawful, religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized and (ii) expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involving the operation of the organization and used for the lawful, religious, charitable, community or educational purposes.

Section 18.2-340-10 Denial, suspension, or revocation of permit; penalties. -- The governing body of the political

subdivision where a permit was issued, or the local official or board designated by the governing body, may deny, suspend, or revoke the permit of any organization found not in strict compliance with the provisions of this article.

Any person violating the provisions of this article shall be guilty of a Class 1 misdemeanor. Any person violating the provisions of Section 18.2-340.9 (A) shall be guilty of a Class 6 felony.

Section 18.2-340.12 Hearings and appeals. -- No permit to conduct bingo games or raffles shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a hearing thereon. After a hearing on the issues, the local governing body or local official or board designated by the

governing body may refuse to issue or may suspend or revoke any such permit if it determines that the organization has not complied with the provisions of this article. Any organization aggrieved by the decision of the local governing body, or of the local official or board designated by the governing body, may appeal such decision to the circuit court.

Appendix F.

Denial Letter to Petitioner: From Respondent: Dated February 9, 1993

February 9, 1993

Mr. Robert D. Eddleton
Secretary/Treasurer
Hanover Society for the Deaf
Route 8, Box 1185
Ashland, VA 23005

Dear Mr. Eddleton,

I have considered the information you provided at the Hanover Society's bingo appeal hearing which was held yesterday in my office.

During the hearing you provided a membership list and a satisfactory health

inspection report. You also provided a copy of a recorded deed, dated February 4, 1993 which apparently transfers the Jamaica Club property from Beauford and Evelyn Eddleton to the Hanover Society for the Deaf. You also indicated a willingness to correct some past errors. Specifically, you indicated that you would reimburse the Society for computer game software and Price Club memberships. You also said that you would make an attempt to refinance the existing 20% mortgage with your father at a lower interest rate, and that you would improve internal controls and stop destroying nightly game logs.

The actions you have taken since my letter of January 29, 1993, and the actions you have promised to take in the

future, address some of the specific concerns that I had. However, despite these actions, my basic conclusion about the Society's bingo operation remains unchanged.

It is my conclusion that the Jamaica Club bingo games are not "operated exclusively for religious, charitable, community or educational purposes," as required by law.

During the past twelve months, the Society took in gross receipts of $800,152 from bingo games. The "charitable donations" consisted of $2,547 in catering fees paid to your mother for a hearing impaired event, $250 for an interpreter and $72 for a puppeteer at that event, and $640 to other charities. Excluding the related-party payment and the gifts to other

organizations, the amount that benefited the deaf was $322 or 0.04%. This token charitable expense does not justify the renewal of your bingo permit.

During the hearing, you repeatedly asserted that the mortgage payments should be considered charitable, since the Society is acquiring a valuable asset. You fail to explain, however, why the Society would spend so much to acquire an asset (the Jamaica Club) that is used only one day per year for an event that benefits the hearing impaired. What about the other 364 days of the year? I simply fail to understand how hearing impaired persons are benefiting from the $53,539 in annual mortgage payments (at 20% interest) that go to your father. This use of proceeds cannot

be considered charitable. Furthermore, the fact that this property was originally conveyed to the Society in 1981 by an unrecorded "pocket deed," that it was conveyed to your mother in 1986 by a deed recorded at the Courthouse and that it was conveyed to the Society by a deed recorded only last week raises doubts as to whether it has ever been intended that the Society own the property.

As I indicated in my letter of January 29, 1993, the record of the Society over the past twelve months has been poor. The destruction of game logs, the poor record-keeping, the poor sanitation, the excessive, unrelated, and inappropriate expenditures, the memberships and payments provided to family members, the excessive interest on

the mortgage with your father, the curious history of conveyances of this property, and the pitiful efforts to benefit charity make the Hanover Society unworthy of a renewed bingo permit.

Finally, I am now aware that you have mounted an effort to sign up "non-voting associate members" at the door during bingo games, beginning last week. This apparently is an effort to get around the law that limits the use of pull-tab devices to closed meetings of members and their guests. My definition of a "member" is not anyone who signs a book the night of a bingo game and pays an extra dollar fee.

Your recent creation of "quasi-members" appears to be a scheme to avoid the requirements of the law while

maintaining voting control of the Society within the Eddleton family. This new approach is further evidence that the Society is not a legitimate charity, with members who are devoted to assisting the deaf, but rather a bingo operation created by and for the Eddleton family.

In conclusion, the permit renewal application is denied. You may appeal my decision to the Circuit Court.

Sincerely,

/s/ John F. Berry
County Administrator
JFB/ba
cc: V. Stuart Cook, Sheriff
Sterling E. Rives, III, County Attorney
Eddie R. Vaughan, Commonwealth's Attorney

APPENDIX G

ASSIGNMENTS OF ERROR

1. The Court erred by failing to find that the County had violated the Society's Constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution and the Virginia Constitution. In particular, its due process and equal protection rights were violated (Tr. page 102 thru 104).

2. The Court erred by failing to find that the County abused its discretion, violated Constitutional and Statutory provisions, acted in excess of its jurisdiction, misconstrued and made errors of law, conducted proceedings that

were irregular, and, finally that County's findings are arbitrary, capricious and unreasonable (Tr. page 110).

3. The Court erred by finding that the County's decision is supported by the evidence (Tr. pages 100, 104 thru 106).

4. The Court's decision is plainly wrong and, in fact, based on the Court's biased statement that it does not like bingo (Tr. page 109, Lines 11-16).

5. The Court erred by failing to follow the law as set forth by the Society and not disputed by the County which cited no cases in its Memorandum.

6. The Court erred by adopting the County's position on use of percentages when the law concerning use of proceeds percentage has not been adopted by local ordinance (Tr. page 110, County

Administrator's file, page 4).

7. The Court erred by not accepting the Society's contention that the Society was treated unfairly compared to other permit holders (Tr. pages 101 thru 104).

8. The Court erred by refusing to allow witnesses to testify at the March 10, 1993 hearing (Tr. pages 22, 34, line 18).

9. The Court erred by refusing to grant the Society's Motion for Summary Judgment, and for cutting the Society off in the middle of making said Motion (Tr. page 20).

10. The Court erred by refusing to accept the 1985 letter of Lisa Barker indicating the County knew all about the 1981 real estate transaction despite positions taken on Page 15 of County

Memorandum that it did not know until 1992 (Tr. page 34).

11. The Court erred by refusing to accept the Society's newspaper articles on interest rate and transcript of the public hearing on January 6, 1993, at which time County agents spoke on the issue of pull tab devices (Tr. page 14).

12. The Court erred by failing to recognize that all eleven (11) points of the County's denial letter were cured or legally unenforceable (Tr. page 15).

13. The Court erred by personal reference to its feelings towards bingo and its false reference to numerous other years proceedings, and to a partially built building, when only two (2) prior hearings (1981 and 1985) occurred, and, there is no partially built building on the Society's property (Tr. pages 103,

109, and 110).

14. The Court erred by stating the County can act carte blanche in these matters (Tr. page 110).

15. The Court erred by not considering letters of support from hundreds of citizens and from the interpreter (Appellant's Addendum pages 102, 140-168).

16. The Court erred by refusing to grant a stay pending Appeal (Tr. page 111).

17. The Court erred by saying (Tr. page 99, lines 2-5) that the building was not used for charitable purposes, while disregarding that the fact that it is available to deaf people to come over at any time, it is used for the annual seminar, where the Society holds its

Bimonthly organizational meetings, and eventually the building will be owned by the Society (Tr. page 99).

18. The Court erred (Tr. page 99, Lines 17-21) by making vague references to 1980, 1981, 1985, hearings about complying since the Society was never shown not to be in compliance with anything at that time and those cases were limited to various issues (rent and access to operating account) outside the scope of the issues in this case (Tr. page 110).

19. The Court erred by saying the Eddleton family wants to do everything the "hard way", because the Society has always acted in a legally correct manner (Tr. page 100).

20. The Court erred by finding that there is no record of income, proceeds,

cash that was the concern in 1985, (Tr. page 100, Lines 21-23), because all quarterly and annual reports listing proceeds, cash and expenditures have always been fully approved by the County. (Appellant's Addendum page 117, 118, 119, 120, county administrator record page 16). The Court's reference to 1985 had nothing to do with the facts of this case. All reports of cash and disbursements have always been approved by the County (County's administrative record page 69, 70, 71, and pages 135-177).

21. The Court erred by referring to the rent in 1981 (Tr. page 101, line 8), since on independent M.I.A. Appraisal verified at the time that the rent was proper.

22. The Court erred by finding that Mr. Ayers shrewdly violated the bingo law (Tr. page 101, Lines 12 and 13), because the real estate transaction was perfectly lawful and the Court even refused to hear from Mr. Ayers.

23. The Court erred by finding (Tr. page 110, lines 15-20) the County "has allowed Society time to correct its situation, has reviewed it, and it still comes up with the fact that the Society doesn't comply with the Statute and Ordinance because there is no evidence to substantiate the finding that the Society was given time in 1992 to comply and no evidence that the Society is not in compliance with any Statutes or Ordinances.

Appendix H

Letter from Lisa Barker, Assistant Attorney for Respondent to Robert S. Ganey, Attorney for Petitioner.

August 23, 1985

Robert S. Ganey, Esquire
P.O. Box 174
Hanover, VA 23069

Re: Hanover Society for the Deaf Bingo Permit

Dear Mr. Ganey:

Some time ago you requested that I give you written confirmation of my review of documents pertaining to the above matter, which you delivered to me at my request. Those documents consist

of a note executed by Robert D. Eddleton for Hanover Society for the Deaf, Inc., dated September 18, 1981; an agreement dated September 18, 1981 between Beauford D. Eddleton and Evelyn J. Eddleton and Hanover Society for the Deaf, Inc.; and a deed of trust dated September 18, 1981 between Mr. and Mrs. Eddleton and Charles E. Ayers, Jr. and Stephen L. Dalton. The effect of these documents is that Hanover Society for the Deaf, Inc. makes payments pursuant to an agreement and escrow agreement, essentially constituting an installment sale contract. The Society has the right to use the Jamaica Club property during the period of the agreement, which provides for full payment by September 1, 2011 of the amount of $267,000.00 plus interest at the rate of twenty percent, in

addition to an initial $40,000.00 cash payment. The only question these documents raise in my mind is a reference, which appears to be an inadvertent error, in the note. The fourth paragraph contains reference to a deed of trust securing the note. I do not have a deed of trust executed by Hanover Society for the Deaf, Inc., securing that note. I would appreciate some explanation of that inconsistency.

My reason for reviewing these documents is a requirement contained in Virginia Code Section 18.2-30.9(A), that gross receipts of bingo games and raffles be used only for certain purposes. Hanover Society for the Deaf, Inc. makes payments on the note from gross receipts. The documents that I have reviewed

indicate that payments on that note constitute expenses relating to the acquisition of an interest in real property, as referred to in Section 18.2-340.9(A)(ii). That section further requires that the real property must involve the operation of the organization and be used for lawful, religious, charitable, community or educational purposes. As we discussed some time ago, we need documentation of the use of the property for "the operation of the organization and (use) for lawful, religious , charitable, community or educational purposes." I would suggest that such documentation may include schedules of use verified by an officer of the Society or some other information. I would appreciate your submitting that information to either Rhu Harris or me.

If I may be of help in this matter, please let me know.

Thank you for your assistance.

Sincerely,

/s/ A. Lisa Barker

Assistant County Attorney

ALB/rs

Encl.

cc; Cecil R. Harris

Supreme Court, U.S.
FILED
NOV 29 1993
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No. 93-668

In The

Supreme Court of the United States

October Term, 1993

HANOVER SOCIETY FOR THE DEAF, INC.,

Petitioner,

v.

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Respondent.

On Petition For Writ Of Certiorari
To The Virginia Supreme Court

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BOARD OF SUPERVISORS OF
HANOVER COUNTY

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QUESTIONS PRESENTED

None of the questions presented by the Hanover Society for the Deaf ("Society") for review by the Court on writ of certiorari are appropriate under the criteria set forth in Rule 10 of the Supreme Court Rules.

The first question stated in the Society's Petition is simply not presented by the facts in this case, because the Society did use "compulsory process" to subpoena witnesses for the trial court appeal from the administrative decision to deny its bingo permit application, and those witnesses were present and available to testify. The trial court, however, decided that Virginia law intended such appeals to be held "on the record" and declined to hear the testimony of the subpoenaed witnesses.

The second question stated by the Society in its Petition regarding the applicability of the due process clauses in the Fifth Amendment is inappropriate for review because, under the laws of the Commonwealth of Virginia, local governing bodies enjoy significant discretion in determining whether a bingo permit should be issued. Accordingly, a bingo permit applicant has no legitimate entitlement and, hence, no cognizable property interest which would invoke due process considerations.

The third question stated by the Society need not be reviewed by this Court, because it is clear that the decision of an Ohio court interpreting an Ohio statute does not create a binding precedent for a Virginia court interpreting a Virginia statute.

QUESTIONS PRESENTED – Continued

The fourth question stated by the Society, concerning whether a portion of Virginia's statutes pertaining to bingo permits is "unconstitutionally vague", is not appropriate for review because the Society's brief fails to identify any aspect of the statute that is "unconstitutionally vague" and reflects merely the Society's displeasure with the finding of the trial court that the Society has failed to meet the requirements for organizations permitted to conduct bingo games under Virginia law.

The fifth question stated by the Society appears to be no more than a repetition of the second question stated by the Society.

The sixth question stated by the Society is not appropriate for review by this Court because it misrepresents the provisions of the Virginia statutes governing the issuance of bingo permits which clearly establish criteria governing the issuance of such permits and provide for an administrative hearing with an appeal by right to the Circuit Court.

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Respondent.

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To The Virginia Supreme Court

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Hanover Society for the Deaf, Inc. (the "Society") is petitioning this Court for a writ of certiorari for review of a decision of the Virginia Supreme Court. By order entered June 3, 1993, the Virginia Supreme Court refused the petition for appeal of the Petitioner from the Hanover County Circuit Court and by order entered July 30, 1993 denied a Petition for Rehearing. The order of the Hanover County Circuit Court (the "Circuit Court") affirming the decision of the Hanover County Administrator denying the bingo permit application of the Society was entered March 12, 1993.

STATEMENT OF FACTS

Hanover County finds that the statement of facts offered by the Society in its Petition for Writ of Certiorari intermixes facts with conclusions of law, argument and prayer for relief. At issue is the bingo permit application of the Society for 1993 which was filed with Hanover County, Virginia (the "County") on or about December 12, 1992. The Society's 1992 permit was extended until January 31, 1993, in order to provide an adequate opportunity for the County to review the application. On January 29, the County Administrator sent a letter to Mr. Norman Eddleton, President of the Society, specifying in considerable detail the County Administrator's reasons for denying the Society's bingo permit application for 1993.

At the request of Mr. Robert S. Ganey, counsel for the Society, the County Administrator extended the Society's 1992 bingo permit until February 9, 1993, in order that the Society might exercise its right to an administrative hearing. The hearing was held in the County Administrator's office on February 8, 1993, for a period of approximately two hours. The Society was represented by Mr. Ganey, its counsel, Mr. Robert Eddleton, Secretary and Treasurer of the Society, and Mr. Frank Stahl, a Certified Public Accountant who filed the most recent annual audit report for the Society.

On February 9, 1993, the County Administrator sent a letter to Mr. Eddleton stating his conclusions after the hearing held on February 8 and denying the Society's bingo permit application.

The Society's appeal from the County Administrator's decision was filed with the Circuit Court pursuant to Va. Code Ann. § 18.2-340.12 (Supp. 1992) on or about February 10, and on February 12, after argument by counsel, the Circuit Court ordered that the Society could continue to conduct bingo games pending a hearing on the merits of the Society's appeal. The Circuit Court further indicated that it intended to hear this appeal on the administrative record and would receive additional evidence only if it were clearly required to meet the ends of justice.

In accordance with the Circuit Court's direction and the agreement of counsel, a transcript of the hearing before the County Administrator on February 8 was prepared, and the County compiled all of the documents in its administrative files that it deemed relevant to these proceedings. On March 1, the Society submitted its memorandum in support of its appeal and an "addendum" consisting of documents from the County's files pertaining to other bingo permit applications, signatures on a petition in support of the Society's bingo games, copies of bank loan applications made after the February 8 County Administrator's hearing, portions of a rental rate study for facilities located in an adjoining county and other documents with no apparent relevance to the pending proceeding. The Trial Memorandum of the County was filed on March 5, and the hearing was held in the Circuit Court on March 10, 1993. The Society had subpoenaed a number of witnesses, ostensibly to testify with regard to other bingo permit applications, and these witnesses were present and available to testify.

In preliminary proceedings on March 10, the Circuit Court ruled that it had reviewed and would consider all of the documents and other materials previously submitted by the parties, but that it would not receive additional evidence or hear the testimony of witnesses, to which ruling counsel for the Society objected. After a hearing on the record, the Circuit Court sustained the decision of the County Administrator to deny the bingo permit application of the Society and, on March 12, 1993, entered an order to that effect.

The Society was established by members of the family of Beauford D. and Evelyn Eddleton in 1978 and immediately began operating bingo games in the building known as the Jamaica Club situated on property owned by Mr. and Mrs. Eddleton. After the County denied the Society's bingo permit application in December of 1980 because of the excessive rents paid by the Society to Mr. and Mrs. Eddleton, in violation of State law, the Society was incorporated in March of 1981 and apparently purchased the Jamaica Club property in September of 1981, although the deed was not recorded until February 4, 1993.

The initial Board of Directors of the incorporated Society consisted of Norman D. Eddleton, President, Janet Henderson, Vice President, and Robert D. Eddleton, Secretary and Treasurer, all three of whom are the children of Beauford D. and Evelyn Eddleton. The same persons still hold these offices today.

In 1981, the three members of the Board of Directors, the children of Mr. and Mrs. Eddleton, decided that the Society would purchase the Jamaica Club property from

their mother and father and agreed to the purchase price and other terms of the transaction. This transaction took place while litigation was pending in the Circuit Court regarding the issue of whether the rental payments made by the Society to Mr. and Mrs. Eddleton for the property were "excessive." The rent paid by the Society to Mr. and Mrs. Eddleton during the fiscal year ending September 20, 1980 was $54,434. The terms of the purchase agreement called for the Society to make mortgage payments, in addition to the $40,000 cash payment in September of 1981, amounting to $53,539 per year for the next thirty years, substantially the same as the amount of the rent payments.

The County Administrator's letters of January 29 and February 9 denying the permit recited the fact that the Society failed to file an adequate audit opinion as required by law. Virginia Code Section 18.2-340.6(B)(3) requires that any organization having annual gross receipts from bingo games in excess of $500,000 attach to its financial report an opinion of a licensed independent Certified Public Accountant that:

> (i) the annual financial report represents fairly, in all material respects, beginning cash, receipts, operating costs, use of proceeds, and ending cash;
>
> (ii) the proceeds of any bingo games or raffles have been used, in all material respects, for those lawful, religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized;

(iii) the gross receipts have been used in all material respects, in accordance with the provisions of this article.

There were a number of deficiencies in the audit that resulted in an unacceptable certification of the first standard prescribed by statute. Moreover, the audit opinion failed altogether to address the second and third standards of accounting review specified in the statute. The statute prescribes that the failure to file the opinion of a licensed Certified Public Accountant as required "shall cause the automatic revocation of the permit. . . . "

Furthermore, the County's review of the Society's application and the audit report revealed that in FY 91-92 less than one-half of one percent of the $800,000 in gross proceeds from the Society's bingo operations were spent for charitable purposes, with most of the net proceeds being paid to members of the Eddleton family for "mortgage payments" and for various services.

For these and other reasons cited in the County Administrator's letters of January 29 and February 9, the County Administrator determined that the Society was not an organization "operated exclusively for religious, charitable, community, or educational purposes . . . " as required by Virginia Code Section 18.2-340.1(1)(B). Accordingly, the permit application for 1993 was denied.

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE HANOVER COUNTY ADMINISTRATOR TO DENY THE BINGO PERMIT APPLICATION OF THE HANOVER SOCIETY FOR THE DEAF AND THE DECISIONS OF THE VIRGINIA COURTS WERE BASED ON PROVISIONS OF STATE STATUTES. PETITIONER'S ARGUMENTS RAISE ONLY QUESTIONS OF INTERPRETATION OF STATE LAW.

Chapter 8 of Title 18.2 of the Code of Virginia sets forth in detail the statutory scheme for the regulation of bingo and raffles in Virginia. Under these statutes, bingo and raffles constitute a form of gambling and are legal in Virginia only as specifically authorized by statute.

A bingo permit issued by a local governing authority constitutes the granting of a privilege, not a right, and the privilege must be exercised strictly within this specific exception to the general prohibition against gambling. The privilege represented by a permit to operate bingo games is available only to qualified "organizations" as that term is defined in Virginia Code Section 18.2-340.1(1). In addition to voluntary fire departments, rescue squads, veteran's associations and fraternal associations, qualified organizations include any "organization operated *exclusively* for religious, charitable, community or educational purposes. . . . " (Emphasis added.)

Virginia Code Section 18.2-340.3 establishes a number of requirements for the issuance of a permit and limitations upon the validity and duration of the permit. Subsection 5 states that "[u]pon compliance by the applicant with the provisions of this article, and at the *discretion* of

the governing body or its designated official, a permit *may* be issued." (Emphasis added.) This discretionary authority vested in the locality is also evident in Virginia Code Section 18.2-340.10 which provides that the "governing body . . . or local official . . . *may* deny, suspend or revoke the permit of any organization found not to be in *strict* compliance with the provisions of this article." (Emphasis added.) Similarly, Virginia Code Section 18.2-340.12 provides that "[a]fter a hearing on the issues, the local governing body or official . . . *may* refuse to issue or *may* suspend or revoke any such permit . . . . " (Emphasis added.) The emphasis in these statutes upon "strict compliance" with the provisions of the article is further illustrated by Virginia Code Section 18.2-340.6(B) which mandates the *automatic revocation* of a bingo permit for failure to file financial reports when due and also mandates *automatic revocation* if any organization required to do so fails to file the opinion of a licensed independent certified public accountant meeting the specific requirements of paragraph (B)(3).

The County Administrator's decision to deny the Society's permit application and the decisions of the Virginia courts in this case were not arbitrary, capricious or unreasonable. The County Administrator had cogent reasons for denying the permit as articulated in his letters of January 29 and February 9. The bases for the County Administrator's decision were reviewed by the Circuit Court on the record and through the memoranda and oral argument of counsel and found to be sufficient and compelling. The Society has presented no evidence or argument that the County Administrator's denial of the permit application exceeded the authority of the County

Administrator, involved an error of law, resulted from fraud or corruption, or was otherwise subject to reversal under the standards for judicial review of discretionary administrative actions. Consequently, the County Administrator's decision was properly sustained by the Circuit Court and by the Virginia Supreme Court.

The Society's arguments for review by this Court, although couched in terms of constitutional law, are merely disagreements with the Virginia laws pertaining to bingo and with the fact findings of the County Administrator and Hanover County Circuit Court. The issue raised in the Society's brief regarding the decision of the Hanover County Circuit Court to hear the appeal on the record and not to allow the testimony of witnesses pertains only to the interpretation of the State statutes and raises no federal questions. Decisions of state courts adequately supported by state law are not reviewed by this Court unless there are substantial, or "grave" federal questions raised. *U.S. v. Johnston*, 268 U.S. 220 (1925). Mere invocation by a petitioner of the due process and equal protection clauses of the Constitution does not provide a basis for this Court to interpret state laws. *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157 (1917).

II. THE DECISION AND THE DECISION MAKING PROCESS BY WHICH THE HANOVER COUNTY ADMINISTRATOR DENIED THE BINGO PERMIT APPLICATION OF THE HANOVER SOCIETY FOR THE DEAF WERE CONSISTENT WITH THE EQUAL PROTECTION AND DUE PROCESS RIGHTS OF THE APPLICANT.

The Society's attempts to invoke the concepts of procedural and substantive due process in this case are misguided. In order for the Society to state a claim either under procedural or substantive due process, it must first demonstrate that it has a "cognizable property interest, rooted in State law," in its lost benefit, i.e. its permit to operate bingo games. *See Scott v. Greenville County*, 716 F.2d 1409, 1418 (4th Cir. 1983). However, a property interest requires more than a "unilateral expectation" that a permit or license will be issued; instead there must be a "legitimate claim of entitlement." *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Where a local agency has significant discretion in determining whether a permit should issue, then a claimant has no legitimate entitlement and, therefore, no cognizable property interest. *Gardner v. Baltimore Mayor and City Council*, 969 F.2d 63, 68 (4th Cir. 1992).

Moreover, even if due process considerations were applicable, the Virginia bingo statutes, which require an opportunity for an administrative hearing prior to any decision to deny or revoke a permit and allow an appeal by right to circuit court, provide ample procedural due process. The Society has not alleged in this case any failure to comply with the procedural requirements of the

State statute. It is undisputed that the Society was provided with detailed notice and ample opportunity to be heard prior to the County Administrator's final decision to deny its permit application. Furthermore, upon the request of Society, the County Administrator extended its bingo permit to allow the Society to continue operating bingo games until after the administrative hearing and final decision. The Circuit Court, upon the petition of the Society, allowed it to continue operating bingo games until the Circuit Court had heard its appeal. These proceedings more than satisfy the procedure described in Virginia Code Section 18.1-340.12, and the predispositional and post deprivation due process guarantees of the Virginia Constitution and United States Constitution have been satisfied. The Petitioner has had the benefit of both administrative and judicial review, including the elements of notice and opportunity for hearing required to meet due process requirements. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

With respect to the assertion of the Society that its rights to equal protection under the United States Constitution were deprived by the decision of the County Administrator to deny its bingo permit application, the Society makes no assertion that it is a member of any group or classification that would trigger strict or even heightened scrutiny under equal protection analysis. Consequently, the question under equal protection review is whether the County treated the Society in a manner different from other bingo permit applicants and, if so, whether it had a rational basis for doing so.

The Society's Petition for Writ of Certiorari suggests that its permit application was the only one denied by the

County and that, consequently, it was treated differently from others. In fact, as established by the record before the trial court, in June of 1992, the County denied the bingo permit application of Helping American People, Inc., after determining that, based on the County's investigation, the organization was not "operated exclusively for . . . charitable . . . purposes . . . " as required by Virginia Code Section 18.2-340.1(1). As the denial letters of the County Administrator indicate, this consideration was also the primary factor in his decision to deny the Society's application.

Moreover, ample facts were established in the record before the trial court to distinguish the Society from the other organizations in the County for which bingo permit applications were approved, including the fact that most of the net proceeds from the bingo games were expended by the Society in the form of payments to the parents of the members of the Board of Directors of the Society. These facts establish a rational basis for the County Administrator to deny this permit application while approving the others. When a distinction made in a decision of a government entity, under these circumstances, has a rational basis, there is no infringement of the right of equal protection. *Dandridge v. Williams*, 397 U.S. 471 (1970).

CONCLUSION

The Petitioner presents facts and arguments which amount to disagreement with the factual findings of the Virginia courts and disagreement with the rulings of

those courts regarding State statutes. There is no federal question presented, and the Petition of the Society for Writ of Certiorari should be denied.

Respectfully submitted,

BOARD OF SUPERVISORS OF
HANOVER COUNTY

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Supreme Court, U.S.
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No. 93-668

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

*

HANOVER SOCIETY FOR THE DEAF, INC.

Petitioner,

v.

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Respondent.

*

On Petition For Writ Of Certiorari
To The Virginia Supreme Court

*

REPLY BRIEF
IN SUPPORT OF GRANTING PETITION

*

Hanover Society for the
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BEST AVAILABLE COPY

QUESTIONS PRESENTED

All of the questions presented by Society are appropriate for review under Rule 10 of the Supreme Court. All of County statements are incorrect and misplaced argument under the questions presented.

The first question shows denial of Fifth, Sixth, Ninth, and Fourteenth Amendment Rights. Since Society had no right to subpoena witnesses to the Administrative hearing, or to cross-examine anyone, (County put no evidence on at Administrative Hearing) how can Society ever properly defend itself if it cannot subpoena witnesses and have the benefit of their testimony. Under the facts of this case, it is easily understandable why County would want no witnesses to testify.

County's position regarding the second question places County, and Virginia Courts, in direct conflict with the Comforter, supra, case and the Ohio Courts. That Court found no problems with "legitimate entitlement" and "cognizable property interest" invoking due process because "once State establishes a system for distribution of bingo licenses, the due process clauses impose requirement of fundamental fairness under the Fifth and Fourteenth Amendments."

Society has paid to County a percentage bingo fee of over $ 89,000.00, in total, since 1978. It has been in business with the County with annual approvals and expectations of annual approvals.

The third question is critically

important because unless a fair and uniform standard for evidentiary process is established, serious Constitutional rights violations will occur as they have in this case.

The fourth question clearly identifies the aspect of the Virginia Code that is "vague".

The fifth question illustrates the many specific examples of denial of fundamental fairness. It is not surprising that County fails to recognize the examples because they fail to recognize the principle.

County's response to the sixth question basically means that to have a sham Administrative hearing and to pay, at best, lip service to Constitutional guarantees is entirely proper as long as County prevails.

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Petitioner,

v.

BOARD OF SUPERVISORS OF HANOVER COUNTY,
Respondent.

*

On Petition For Writ Of Certiorari
To The Virginia Supreme Court

*

REPLY BRIEF IN SUPPORT OF GRANTING PETITION

*

STATEMENT OF THE CASE

This reply brief is filed in response to new argument raised in the Brief in Opposition of Respondent filed on November 29, 1993.

STATEMENT OF FACTS

Society finds that County's Statement of Facts leads to many false impressions and errors. County extended Society's permit to February 9, 1993 not because of the request of counsel for Society, but because of the threat of immediate and imminent injunction after Society had filed suit in early February, 1993.

County falsely claims that the Circuit Court, at the pretrial conference, "would receive additional evidence only if it were clearly required to meet the ends of justice." The Court said it would receive evidence to meet the ends of justice. Both Society and County subpoenaed witnesses to meet that end.

No agreement of counsel was reached

regarding the transcript or record.

At the February 8, 1993 hearing, Society stated, that despite the prior failure of its efforts to obtain refinancing of its mortgage, it would immediately apply again for refinancing -- which it did. Society advised County on that date that results of refinancing requests would be promptly forwarded to County, and Society did that as well.

In reference to the neighboring Henrico County bingo rent study, which County argues had "no apparent relevance", County's attorney argued on March 10, 1993, that the Henrico County bingo rent publicity had caused Hanover to take a new look at expenses in Hanover (TR. page 68). The results of the study clearly show that the Society's mortgage payment was less than what it

would have been charged in rental payments, without any of the benefits of ownership.

County tells the Court that Society's subpoenaed witnesses were in Court on March 10, 1993, "ostensibly to testify with regard to other bingo permit applications." This is only part of the critical evidence which would have come from the witnesses, Society's Opening Brief details the extent of the denied testimony from witnesses.

What had the Court "ruled it had reviewed", as County argues? No "hearing" occurred on March 10, 1993, only argument of counsel.

Society was formed in October of 1975, not 1978. It was formed as stated throughout the proceeding, because of Ronald Eddleton, a family member, now age

26, who is totally deaf, and other similarly situated hearing impaired individuals.

Society began bingo operations in 1978, three years after its inception.

The 1981 suit over rents was dismissed agreed. Allegations of excessive rent were false as indicated by an M.A.I. appraisal of rents. (App. 47)

The deed was not recorded until 1993 because of the due on sale clause. Since 1981, County had copies of the deed, deed of trusts, agreements, sales agreement, escrow documents, and all pertinent papers.

Society has 19 regular members and over 800 associate members. All annual elections have been fairly conducted pursuant to the bylaws filed with the State Corporation Commission.

The real estate purchase price was for a lower monthly payment than the corresponding rent and the purchase precluded expected future increases in annual rental payments. Society acquired equity in the property.

Society did file an adequate audit opinion to meet the requirements of Virginia Code Section 18.2-340.6 (B)(3). Its CPA's opinion letter (App. 1) is the same as its previous approval letter for the past three years. (App. 5, 9, 13) Virginia Code Section 18.2-340.6(B)(3) had the same CPA filing requirements since 1989. Society's CPA's letter is in fact, consistent, and almost identical, to all other permit holders' letters for 1993 (App. 16, 21, 25, 29, 33, 37, 42)

There were no violations cited in Society's opinion letter. Other

organizations' CPA's opinion letters contain numerous violations by those other organizations.

County's reference to Society's CPA's failure to address the second and third standards of accounting review specified in the statute (18.2-340.6 (B)(3) fail to report to this Court that none of the other permit holders' audit opinions address the second or third standards (App. 16, 21, 25, 29, 33, 37, 42). This is a classic example of denial of equal protection, since County did not deny approval to any other permit holders for the exact same alleged shortcomings County argues to this Court.

Society has printed, at great expense and effort, all of the other permit holder's opinion letters in the attached Appendix to prove County's

flagrant denial of equal protection.

County made same argument to Trial Court on March 10, 1993, and Society proved to the Court that the County was denying equal protection. There is no fundamental fairness of treatment for Society.

For reasons fully argued in Society's Opening Brief, County's claim of percentages for charity is false. The Trial Court Judge commented to the percentage question on March 10, 1993, "I don't know that percentages have anything to do with it." (TR. page 106).

REASONS FOR GRANTING WRIT

I. Petitioner's arguments do not exclusively raise questions of interpretation of State laws.

The lower Court decision was based on a number of factors including the many

undenied violations of equal protection and due process which were not addressed in Respondent's Brief.

The County's alleged "cogent reasons" for denying the permit are groundless and totally without foundation. County desires the Court to consider its "reasons" to the exclusion of all estoppel, due process, equal protection and laches arguments.

Society points out that County cited no specific objective Code Sections which County or the Court found Society had violated.

County argues "Society has presented no evidence . . . ", when it was the County, and Court, who refused to allow evidence at Trial. Even the limited record before the Trial Court proves all of the error, fraud, corruption, and

abuses of authority needed to review this case. In Ohio, an applicant proceeds to review on the solid footing of due process and fundamental fairness. In Virginia, an applicant proceeds to review before an Administrator, whom the Court says has "carte blanche" authority. (TR. pg. 110)

The County Administrator began the annual review by falsely accusing Society of violating the law. When Society responded, "The tone of your letter was quite threatening. I personally do not appreciate being menaced by your letter or its intimidating message. You should have in your office records; the necessary files which would have addressed your concerns and answered this inquiry without ever having to send a letter threatening our organization

with "enforcement action". The Administrator apologized and had to eat crow. (TR. pg. 64); (App. pg. 50, 52) A review of these letters shows ample motive for the Administrator's subsequent actions.

II. Administrator's decision is not consistent with the equal protection and due process rights of the applicant (Society).

County argues, "Decisions of State Court adequately supported by State Law are not reviewed by this Court unless there are substantial or "grave" Federal questions raised. U.S. v. Johnston, 268, U. S. 220 (1925)."

That case, from the Circuit Court of Appeals for the Second Circuit, never uses the word "grave" Federal questions. The case offers nothing to the relevant

issues raised in this case.

Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157, also fails to deal with an applicant who has been licensed, paid fees, and is regulated by State action in all that it does -- an organization who has an expectancy of State approval, and who must rely on prior State and County rules and precedents.

Any non-Federal ground in this case is so interwoven with Federal grounds as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other. Moran v. Horsley, 178 U. S. 205, Creswill v. Grand Lodge K.P., 225 U. S. 246. Enterprise, supra page 165.

County's argument about the non-Federal ground is certainly unfounded

that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question, Leathe v. Thomas, 207 U. S. 93, Vandalia R. Co. v. Indiana, 207, U. S. 359, Enterprise, supra, p. 165.

This case makes cogent claims of unwarranted and arbitrary discrimination.

Scott v. Greenville County, 716 F 2d. 1409, Board of Regents v. Roth, 408 U.S. 564, and Gardner v. Baltimore Mayor and City Council, 969 F 2d. 63 have very little if any, relevance to the facts of this case. This is not a zoning case or an untenured professor with a one year expired contract.

County fails to show how "ample" due process rights have been allowed in this case. Their claim is a sham.

It is disputed, for the many reasons previously listed, "that the Society was provided with detailed notice and ample opportunity to be heard."

The Mathews v. Eldridge, 424 U.S. 319 case, cited on page 11 of Respondent's brief, involves a person whose Social Security benefits were terminated -- not a bingo permit holder.

That Court pointed out that the individual in fact had a statutory created property intent protected by due process clause of the Fifth Amendment. The Court further noted that fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. U.S.C.A. 5, 14. Armstrong v. Manzo, 380 U.S. 545; Grannis v. Ordean, 234 U.S. 385.

The Court also noted that due

process is not a technical conception with fixed content unrelated to time, place, and circumstances; rather, it is flexible and calls for such procedural protections as particular situations demand. U.S.C.A. 5, 14. Cafeteria Workers v. Mc Elroy, 367 U.S. 886.

Society argues that under the facts of this case a hearing, with subpoenaed witnesses, approximately a judicial trial was necessary. Goldberg v. Kelly, 397 U.S. 266. Wheeler v. Montgomery, 90 S. Ct. 1026. This could only have been at the appeal level, when all the records of all holders were available, to meet the ends of justice.

County and Administrator were clearly and unmistakably only interested in denying Society's permit in sham proceedings. County and Administrator

knew that a comparative analysis of annual reports on all other organizations would show violations of due process and equal protection. County conducted sham hearing knowing full well that all Society's audit opinion letters met all the requirements of the code and/or were not inconsistent with all approved organizations.

The Helping American People, Inc. application is readily distinguishable because that organization never held a permit in Hanover and had not been found to be in compliance, by Respondent, with all Virginia Statutes, since 1978. Principles of laches, estoppel, equal protection, and due process, do not apply as they do in this case.

Since Society has illustrated that the decision to deny its permit has no

rational basis, clearly there is an infringement of the right of equal protection. Dandridge v. Williams, 397 U.S. 471.

None of County's cited cases involve a bingo permit holder's claim for constitutional rights. Bingo applicants in Hanover and Virginia will continue to have no rights until this Court acts. The Rule of "Carte Blanche" authority will prevail.

Because County has approved all of Society's legitimate expenses and audit reports for many years it is estopped to be heard to complain about damages inflicted by its own hand. Pennsylvania v. New Jersey, 426 U.S. 660.

Since County has admitted that it has changed the rules retroactively for review of bingo permit holders'

applications (TR. page 67), the County should not be allowed to prevail based on its misleading ways. United States v. Pennsylvania Industrial Chemical Corp., 411 U.S. 655, 670-675; Moser v. United States, 341 U.S. 41; Kaiser Aetna v. United States, 444 U.S. 164; Santobello v. New York, 404 U. S. 257.

The County refuses to accept the doctrine that it may not apply a new rule retroactively, when to do so would unduly intrude upon reasonable reliance interests. NLRB. v. Bell Aerospace Co., 416 U. S. 267, 295; Atchinson v. Wichita Board of Trade, 412 U. S. 800, 807-808; S.E.C. v. Chenery Corp., 332 U.S. 194.

CONCLUSION

County was never required to put on evidence at the Administrative hearing or Appeal that Society violated any laws.

Society was never allowed to cross examine any of the County witnesses or to call its own witnesses.

Court is requested to grant a Writ of Certiorari on all six questions presented. This is Society's last stop. Please help!!

Appendix 1

Compliance Letter from Frank N. Stahl, Certified Public Accountant dated November 30, 1992.

Hanover Society for the Deaf
Ashland, Virginia

I have audited the statement of cash receipts and disbursements of the bingo game of the Hanover Society for the Deaf for the fiscal year ended September 30, 1992. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following paragraph, I conducted my audit in accordance with generally accepted auditing standards. Those standards

require that I plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipt in the cash receipts and disbursements journal. Accordingly, it was impractical to extend our audit beyond the receipts recorded in

the cash disbursements journal.

As described in the Note to Financial Statements, The Hanover Society for the Deaf follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustment, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at September 30, 1992 and the recorded cash transactions for the year then ended, on the basis of accounting described in Note

1.

/s/ by Frank N. Stahl, CPA

Note to Financial Statements

September 30, 1992.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statements are not intended to present results of operations as would a statement of income.

App. 5

Compliance Letter from Frank N. Stahl, of Stahl and Meredith, P.C., Certified Public Accountants dated November 25, 1991.

Hanover Society for the Deaf
Ashland, Virginia

We have audited the statement of cash receipts and disbursements of the bingo game of the Hanover Society for the Deaf for the fiscal year ended September 30, 1991. This financial statement is the responsibility of the organization's management. Our responsibility is to express an opinion on this financial statement based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with generally accepted

auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipt in the cash receipts and disbursements journal. Accordingly, it was impractical to extend

our audit beyond the receipts recorded in the cash disbursements journal.

As described in the Note to Financial Statements, The Hanover Society for the Deaf follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, except for the effects of such adjustment, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at September 30, 1991 and the recorded cash transactions for the year then ended, on

the basis of accounting described in Note 1.

/s/ by Frank N. Stahl, CPA of Stahl and Meredith, P.C.

Note to Financial Statements

September 30, 1991.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statements are not intended to present results of operations as would a statement of income.

App. 9

Compliance Letter from Frank N. Stahl, Certified Public Accountant dated November 23, 1990.

Hanover Society for the Deaf
Ashland, Virginia

I have audited the statement of cash receipts and disbursements of the bingo game of the Hanover Society for the Deaf for the fiscal year ended September 30, 1990. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following paragraph, I conducted my audit in accordance with generally accepted

auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipt in the cash receipts and disbursements journal. Accordingly, it was impractical to extend

my audit beyond the receipts recorded in the cash disbursements journal.

As described in the Note to Financial Statements, The Hanover Society for the Deaf follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustment, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at September 30, 1990 and the recorded cash transactions for the year then ended, on

the basis of accounting described in Note 1.

/s/ by Frank N. Stahl, CPA

Note to Financial Statements
September 30, 1990.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statements are not intended to present results of operations as would a statement of income.

App. 13

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 20, 1989.

Hanover Society for the Deaf
Ashland, Virginia

I have audited the financial statements of the bingo game of the Hanover Society for the Deaf as of and for the year ended September 30, 1989.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

As part of obtaining reasonable

assurance about whether the financial statements are free of material misstatement. I performed tests of the organization's compliance with certain provisions of laws, regulations, and ordinances applicable to bingo operations and raffles. The management of the Hanover Society for the Deaf is responsible for the organization's compliance with those requirements. My responsibility is to report on compliance with those requirements based on my audit.

My audit procedures disclosed immaterial instances of noncompliance with the requirements referred to above, which are described in the accompanying schedule of comments and findings.

The results of my test indicate that, with respect to the items tested,

the Hanover Society for the Deaf complied in all material respects, with the provisions referred to in a preceding paragraph. With respect to the items not tested, nothing came to my attention that caused me to believe that the organization had not complied, in all material respects, with those provisions.

/s/ by John E. Redd, Jr., CPA

App. 16

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 11, 1992.

Richmond East Moose Lodge # 1947
Mechanicsville, Virginia

I have audited the financial statements of the bingo game of the Richmond East Moose Lodge # 1947 as of and for the year ended September 30, 1992, and have issued my report thereon dated November 11, 1992.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material

misstatement.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatements, I performed tests of the organization's compliance with certain provisions of laws, regulations and ordinances applicable to bingo operations and raffles. The management of the Richmond East Moose Lodge # 1947 is responsible for the organization's compliance with those requirements. My responsibility is to report on compliance with those requirements based on my audit. My audit procedures disclosed instances of noncompliance with the requirements of referred to above, which are described in the accompanying schedule of supplemental data.

/s/ by John E. Redd, Jr., CPA

App. 18

Schedule of Supplemental Data

September 30, 1992

Compliance Violation

1) The organization's gross receipts from instant Bingo were $ 602,263.30 for the year. As such, the instant bingo receipts represent 55.4 per centum of all gross receipts from the organization's bingo operation. According to Virginia Code Section 18.2-340.5 (B), the gross receipts from the playing of instant bingo shall not exceed 33 1/3 per centum of the gross receipts of an organization's bingo operations. Therefore, the organization is in violation.

Comments

1) Limited accounting controls are exercised over cash received during bingo

games. Attendance is determined by the sale of pre-numbered tickets, therefore expected receipts from admission can be computed. However in my tests of daily game logs, none of the computed admission receipts agreed with the reported admission gross receipts. Receipts from sales of special game packs, floor sales, instant bingo and raffles can be determined solely by the cash remitted. There are limited controls in place, whereby the receipts reported can be verified; therefore my audit tests have been limited to tests of transactions recorded on the cash receipts and disbursement journals. Management has advised me that it is impractical to take inventories of bingo supplies or impose similar control procedures.

2) Bank deposits are not made timely

following the weekend bingo games. The receipts from the games played June 6 and 7 were not deposited until June 17. The organization should establish a policy of promptly depositing bingo receipts in order to reduce the risk of theft or loss.

3) The audit fee paid to the County of Hanover for the fiscal year ended September 30, 1991, was overpaid by $ 59.34. The overpayment resulted from the computation of the 1 % audit fee on unaudited gross receipts rather on the audited balances.

App. 21

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 11, 1992.

Richmond East Moose Lodge # 1947
Mechanicsville, Virginia

I have audited the statement of cash receipts of the bingo game of the Richmond East Moose Lodge # 1947 for the fiscal year ended September 30, 1992. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following paragraph, I conducted my audit in accordance with generally accepted

auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipts in the cash receipts and disbursements journal. Accordingly, it was impractical to extend

my audit beyond the receipts recorded in the cash receipts and disbursements journal.

As described in the Note to Financial Statements, the Richmond East Moose Lodge # 1947 follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustments, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at September 30, 1992, and the recorded

transactions for the year then ended, on the basis of accounting described in Note 1.

/s/ by John E. Redd, Jr., CPA

Note to Financial Statements

September 30, 1992.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statements are not intended to present results of operations as would a statement of income.

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 5, 1992.

Mechanicsville Lions Club
Mechanicsville, Virginia

I have audited the financial statements of the bingo game of the Mechanicsville Lions Club as of and for the year ended September 30, 1992, and have issued my report thereon dated November 5, 1992.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatements, I performed tests of the organization's compliance with certain provisions of laws, regulations and ordinances applicable to bingo operations and raffles. The management of the Mechanicsville Lions Club is responsible for the organization's compliance with those requirements. My responsibility is to report on compliance with those requirements based on my audit. My audit procedures disclosed instances of noncompliance with the requirements of referred to above, which are described in the accompanying schedule of supplemental data.

/s/ by John E. Redd, Jr., CPA

App. 27

Schedule of Supplemental Data

September 30, 1992

Compliance Violation

1) The organization's gross receipts from instant Bingo were $ 180,128.00 for the year. As such, the instant bingo receipts represent 43.3 per centum of all gross receipts from the organization's bingo operation. According to Virginia Code Section 18.2-340.5 (B), the gross receipts from the playing of instant bingo shall not exceed 33 1/3 per centum of the gross receipts of an organization's bingo operations. Therefore, the organization is in violation.

Comments

1) Limited accounting controls are exercised over cash received during bingo

games. Attendance is determined by the sale of mini, super and maxi game packs. Receipts from sales of special game packs, floor sales, instant bingo and raffles can be determined solely by the cash remitted. There are limited controls in place, whereby the receipts reported can be verified; therefore my audit tests have been limited to tests of transactions recorded on daily game logs and the cash receipts and disbursement journals. Management has advised me that it is impractical to take inventories of bingo supplies or impose similar control procedures.

2) The bank statement does not signify that this is for the bingo operations. The account title should be modified so it will read Mechanicsville Lions Club, Bingo Account.

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 5, 1992.

Mechanicsville Lions Club
Mechanicsville, Virginia

I have audited the statement of cash receipts of the bingo game of the Richmond East Moose Lodge # 1947 for the fiscal year ended September 30, 1992. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following paragraph, I conducted my audit in accordance with generally accepted auditing standards. Those standards

require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipts in the cash receipts and disbursements journal. Accordingly, it was impractical to extend my audit beyond the receipts recorded in

the cash receipts and disbursements journal.

As described in the Note to Financial Statements, the Mechanicsville Lions Club follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustments, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at September 30, 1992, and the recorded transactions for the year then ended, on

the basis of accounting described in Note 1.

/s/ by John E. Redd, Jr., CPA

Note to Financial Statements

September 30, 1992.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statements are not intended to present results of operations as would a statement of income.

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 16, 1992.

Veterans of Foreign Wars of the United States
Post 9808
Mechanicsville, Virginia

I have audited the financial statements of the bingo game of the Veterans of Foreign Wars of the United States Post 9808 as of and for the year ended September 30, 1992, and have issued my report thereon dated November 16, 1992.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain

reasonable assurance about whether the financial statements are free of material misstatement.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatements, I performed tests of the organization's compliance with certain provisions of laws, regulations and ordinances applicable to bingo operations and raffles. The management of the Veterans of Foreign Wars of the United States Post 9808 is responsible for the organization's compliance with those requirements. My responsibility is to report on compliance with those requirements based on my audit. My audit procedures disclosed instances of noncompliance with the requirements referred to above, which are described in

the accompanying schedule of supplemental data.

/s/ by John E. Redd, Jr., CPA

Schedule of Supplemental Data

September 30, 1992

Compliance Violation

1) The organization's gross receipts from instant Bingo were $ 250,741.00 for the year. As such, the instant bingo receipts represent 34.7 per centum of all gross receipts from the organization's bingo operation. According to Virginia Code Section 18.2-340.5 (B), the gross receipts fro the playing of instant bingo shall not exceed 33 1/3 per centum of the gross receipts of an organization's bingo operations. Therefore, the organization is in violation.

Comments

1) Limited accounting controls are exercised over cash received during bingo games. Attendance is determined by the sale of pre-numbered tickets, therefore expected receipts from admission can be computed. Beyond that, receipts form sales of special game packs, floor sales, instant bingo and raffles can be determined solely by the cash remitted. There are limited controls in place, whereby the receipts reported can be verified; therefore my audit tests have been limited to tests of transactions recorded on daily game logs and the cash receipts and disbursement journals. Management has advised me that it is impractical to take inventories of bingo supplies or impose similar control procedures.

Compliance Letter from John E. Redd, Jr., Certified Public Accountant dated November 16, 1992.

Veterans of Foreign Wars of the United States
Post 9808
Mechanicsville, Virginia

I have audited the statement of cash receipts of the bingo game of the Veterans of Foreign Wars of the United States Post 9808
for the fiscal year ended September 30, 1992. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following

paragraph, I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipts in the cash

receipts and disbursements journal. Accordingly, it was impractical to extend my audit beyond the receipts recorded in the cash receipts and disbursements journal.

As described in the Note to Financial Statements, the Veterans of Foreign Wars of the United States Post 9808 follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustments, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first

paragraph presents fairly, in all material respects, the cash balance at September 30, 1992, and the recorded transactions for the year then ended, on the basis of accounting described in Note 1.

/s/ by John E. Redd, Jr., CPA

Note to Financial Statements
September 30, 1992.

Summary of Significant Accounting Policy:

The organization's policy is to prepare it's financial statements on the basis of cash receipts and disbursements. Consequently, certain revenue is recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the

financial statements are not intended to present results of operations as would a statement of income.

Compliance Letter from Melvin E. Rosen, Jr., Certified Public Accountant dated December 4, 1992.

Independent Auditor's Report

Mechanicsville Little League, Inc.
Mechanicsville, Virginia

I have audited the accompanying statement of cash receipts and disbursements of the bingo operations of Mechanicsville Little League, Inc. for the fiscal year ended September 30, 1992. This financial statement is the responsibility of the organization's management. My responsibility is to express an opinion on this financial statement based on my audit.

Except as discussed in the following paragraph, I conducted my audit in

accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe my audit provides a reasonable basis for my opinion.

Limited accounting controls are exercised over cash receipts prior to initial entry of the receipts in the cash receipts and disbursements journal.

Accordingly, it was impractical to extend my audit beyond the receipts recorded in the cash receipts and disbursements journal.

As described in the Note to Financial Statements, the Mechanicsville Little League, Inc. follows the policy of preparing its financial statement on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In my opinion, except for the effects of such adjustments, if any, that might have resulted if cash receipts referred to above had been susceptible to satisfactory audit tests, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash balance at

September 30, 1992, and the recorded transactions for the year then ended, on the basis of accounting described in Note 1.

/s/ by Melvin E. Rosen, Jr., CPA

Note to Financial Statements
September 30, 1992.

Note Summary of Significant Accounting Policies:

This summary of significant accounting policies of Mechanicsville Little League, Inc. is presented to assist in understanding the organization's financial statement. The financial statement and note are representations of the organization's management, which is responsible for their integrity and objectivity. The

organization is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code.

Basis of Accounting

The organization prepares its financial statement on the basis of cash receipts and disbursements which is a comprehensive basis of accounting which differs from generally accepted accounting principles. Cash basis accounting recognizes revenues when cash is received and expenses when cash is actually disbursed. In contrast, under the accrual basis of accounting as required by generally accepted accounting principles, revenues are recognized in the period that earning process is complete and expenses are recognized when incurred.

MAI APPRAISAL MADE OF THE JAMAICA CLUB FOR THE FAIR MARKET RENTAL VALUE BY JAY B. CALL, III ASSOCIATES, INC. DATED MARCH 3, 1980.

Mr. B. D. Eddleton
Rt. 2, Box 416
Ashland, VA 23005

Reference: Appraisal for Fair Market
Jamaica Club, Route # 1
Hanover County, Virginia
(Our File No. 80-41)

Dear Mr. Eddleton:

Pursuant to your request of January 24, 1980, I have inspected the above captioned property, briefly described in the body of this report, and assembled data indicative of its fair market rental value for Friday and Saturday nights of 1980.

I submit, bound herewith, a report of 6 pages containing the most pertinent of the data assembled, my analysis of the same, and my conclusions.

I conclude from this analysis, subject to the limiting conditions, definitions, and certifications contained herein, that the Jamaica Club should lease on a nightly basis at $ 450.00. This rental would, of course, include all utilities and parking. The lessor would furnish equipment such as tables, chairs, etc., to accommodate the needs of the prospective user. Additionally, the lessee would benefit from the concession profits. Further, a lease term ranging from six to twelve months appears typical.

I wish to thank you for this opportunity to be of service, and if I

can be of further service or assistance, please call me.

Respectfully submitted,

Jay B. Call, III, Associates

/s/ Jay B. Call, III

Letter From John F. Berry, County Administrator to Hanover Society for the Deaf, Inc. dated October 15, 1992.

October 15, 1992

Robert D. Eddleton

Route 6, Box 1866

Ashland, VA. 23005

Dear Mr. Eddleton:

It has come to my attention that you may be conducting bingo games more frequently than allowed under the Hanover County Bingo Ordinance. Section 3.86 of the County Code provides that "no organization may hold bingo games more frequently than two calendar days in any one calendar week." According to the Finance Department records, the only organization that plays bingo at the Jamaica Club is the Hanover Society for

the Deaf. Although this Organization is allowed to play only two days per week, the sign posted in front of the Jamaica Club building advertises bingo three days per week (Thursday, Friday, and Saturday).

Please provide my office with an explanation of this apparent violation; otherwise, enforcement action will be initiated. Please provide a written response by November 2, 1992.

Thank you for your cooperation.

Sincerely,

/s/ John F. Berry

County Administrator

JFB/ba

CC: Colonel V. Stuart Cook

Sterling E. Rives, III

Letter From John F. Berry, County Administrator to Hanover Society for the Deaf, Inc. dated November 18, 1992.

November 18, 1992

Robert D. Eddleton
Executive Secretary-Treasurer
Hanover Soc. for the Deaf, Inc.
Route 8, Box 1185
Ashland, VA. 23005

Dear Mr. Eddleton:

Thank you for your prompt response to my letter regarding bingo games conducted at the Jamaica Club. As you have correctly pointed out, a new game was permitted at that location earlier this year.

Since the date of my earlier letter, a question has been raised regarding the ownership of the Jamaica Club. According

to the County's Assessment records and the recorded deed in the Circuit Court Clerk's Office (see attached) the owner of the property is Evelyn J. Eddleton, not the Hanover Society for the Deaf. These County records appear to be contrary to the representations made in your October 30, 1992 letter to me. Would you please clarify for me the ownership situation, since it affects the number of games that may be permitted on the property.

I apologize for any inconvenience that I may have caused with my questions. I am simply trying to be sure that our records are correct and that you are operating in accordance with Hanover County's Bingo Ordinances. I would appreciate a response by December 4, 1992.

Sincerely,

/s/ John F. Berry

County Administrator

JFB/ba

CC: Colonel V. Stuart Cook, Sheriff

Sterling E. Rives, County Attorney